

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF HEARINGS AND APPEALS

In the Matter of:

**Joyce Eudy,**

Petitioner

HUDOA No. 12-VH-NY-AG-132

Claim No. 7702364010B

January 3, 2013

**DECISION AND ORDER**

On September 27, 2012, Petitioner Joyce Eudy requested a hearing concerning a proposed administrative wage garnishment relating to a debt allegedly owed to the U.S. Department of Housing and Urban Development (“HUD”). The Debt Collection Improvement Act of 1996, as amended (31 U.S.C. § 3720D), authorizes federal agencies to use administrative wage garnishment as a mechanism for the collection of debts owed to the United States government. The Office of Appeals has jurisdiction to determine whether Petitioner’s debt is past due and legally enforceable pursuant to 24 C.F.R. § 17.81(b).

**Applicable Law**

The HUD Secretary has designated the administrative judges of this Court to determine whether the Secretary may collect an alleged debt by means of administrative wage garnishment if such action is contested by a debtor. This hearing is conducted in accordance with the procedures set forth at 31 C.F.R. § 285.11(f)(8)(ii). The Secretary has the initial burden of proof to show the existence and amount of the debt. 31 C.F.R. § 285.11(f)(8)(i). Petitioner, thereafter, must show by a preponderance of the evidence that no debt exists or that the amount of the debt is incorrect. 31 C.F.R. § 285.11(f)(8)(ii). Petitioner may also present evidence that the terms of the repayment schedule are unlawful, would cause an undue financial hardship to Petitioner, or that collection of the debt may not be pursued due to operation of law. Id.

Pursuant to 31 C.F.R. §285.11(f)(10)(ii), HUD must suspend any currently active wage withholding order beginning on the 61st day after receipt of the hearing request and continuing until a written decision has been rendered. (Notice of Docketing, Order and Stay of Referral (“Notice of Docketing”), 3, issued September 27, 2012.) A wage garnishment order was issued on September 17, 2012, and Petitioner later filed her hearing request on September 27, 2012.

**Procedural Background**

A Notice of Docketing was issued by this Court on September 27, 2012. On October 10, 2012, in response to the Notice, the Secretary filed his Statement and documentary evidence in support of his position. The Court thereafter issued a subsequent Order to Petitioner and, on November 20, 2012, Petitioner filed a Statement and documentary evidence in support of her position. This case is now ripe for review.

### **Findings of Fact**

On July 1, 1985, Petitioner executed and delivered a Retail Installment Contract – Security Agreement (“Note”) in the amount of \$26,784.45 to Performance Motors, Inc., who contemporaneously assigned the Note to Countrywide Acceptance Corp. (Secretary’s Statement (“Sec’y. Stat.”), filed October 10, 2012, ¶¶ 2, 3; Ex. 1, Note). Petitioner failed to make payments on the Note as agreed. (*Id.* at ¶ 5). As a result, the Note was assigned to HUD by Countrywide, under the regulations governing the Title I Insurance Program. (Sec’y Stat., ¶ 4; Ex. 1, Note, p. 2; Ex. 2, Declaration of Brian Dillon Director of the Asset Recovery Division of HUD’s Financial Operations Center, (“Dillon Decl.”), ¶ 3.)

HUD’s attempts to collect on the Note from Petitioner have been unsuccessful. (Dillon Decl., ¶ 4.) The Secretary therefore alleges that Petitioner is indebted to HUD in the following amounts:

- (a) \$4,986.51 as the unpaid principal balance as of September 30, 2012;
- (b) \$5,073.61 as the unpaid interest on the principal balance at 9% per annum through September 30, 2012; and
- (c) interest on said principal balance from October 1, 2012, at 9% per annum until paid.

(Sec’y. Stat., ¶ 5.)

On or about June 20, 2012, HUD sent Petitioner a Notice of Intent to Initiate Administrative Wage Garnishment Proceedings (“Notice of Intent”). (Sec’y. Stat., ¶ 6; Dillon Decl., ¶ 5.) In accordance with 31 C.F.R. § 285.11(e)(2)(ii), Petitioner was afforded the opportunity to enter into a written repayment agreement under terms agreeable to HUD. As of this date, Petitioner has not entered into a written repayment agreement. (Sec’y. Stat., ¶ 7.) A Wage Garnishment Order, dated September 17, 2012, was issued to Petitioner’s employer. (*Id.* at ¶ 8.) To date, \$169.98 has been garnished. (*Id.* at ¶ 9.)

The Secretary’s proposed repayment schedule is either \$137.44 per bi-weekly pay period or 15% of Petitioner’s disposable income. (*Id.* at ¶ 10.)

### **Discussion**

Pursuant to 31 C.F.R. § 285.11(f)(8)(ii), Petitioner may present evidence that no debt exists, that the amount of the debt is incorrect, or that the terms of the repayment schedule would cause her financial hardship. Petitioner does not contest the existence or amount of the debt claimed by the Secretary. (Petitioner’s Hearing Request (“Pet’r’s’ Hr’g Req.”), filed September 27, 2012.) Rather, Petitioner claims that a garnishment of any amount will cause “extreme financial hardship.” (*Id.*)

As support for her claim of financial hardship, Petitioner has provided copies of various receipts, pay statements, bank statements, utility and medical bills, and other documentary evidence. (Petitioner’s Documentary Evidence (“Pet’r’s Doc. Evid.”), filed November 20, 2012.) She states that she does not have sufficient disposable income to absorb a garnishment in any amount. (Pet’r’s Doc. Evid., p. 7.)

Disposable income is defined as “that part of the debtor’s compensation from an employer remaining after the deduction of health insurance premiums and any amounts required by law to be withheld ... [including] amounts for deductions such as social security taxes and withholding taxes.” 31 C.F.R. § 285.11(c). The Court also takes into account a Petitioner’s essential monthly living expenses when calculating final monthly disposable income.

Based upon the pay statements submitted by Petitioner, she earns an average gross bi-weekly income of \$1,562.89,<sup>1</sup> before reflecting deductions for the following: federal income tax, \$139.99; Medicare, \$19.14; state income tax, \$57.00; Social Security, \$55.43; health insurance, \$131.59; dental insurance, \$28.84; vision insurance, \$5.75. As a result, Petitioner’s net income on a bi-weekly basis is \$1,125.15, and results in a monthly net income of \$2,250.30.

Petitioner also provided proofs of payment that substantiate her monthly expenses of: rent, \$665; car payment, \$364.88; electricity, \$79.78; automobile insurance, \$94.81; telephone: \$110.00. (Pet’r’s Doc. Evid.) Petitioner claims \$685 per month as food costs, but this amount is not sufficiently substantiated by the evidence of record, but what she has provided are a few receipts that indicate she spends approximately \$60 per month on groceries, as well copies of pay statements to show infrequent after-tax deductions for “NE Cafeteria” that she claims proves that she purchases food at her employer’s cafeteria to feed herself and her daughter. As such, the Court will credit towards Petitioner’s monthly grocery bill an average monthly amount of \$120 per month on food from the cafeteria, and \$60 per month on groceries.

Petitioner’s documentary evidence also includes several copies of medical bills. However, it is unclear what is actually covered by the medical bills submitted so the Court is unable to confirm that these alleged expenses essential and incurred on a monthly basis. Consequently, the Court will not credit these medical bills towards Petitioner’s monthly expenses.

Based on the calculations thus far, Petitioner’s essential monthly expenses total \$1,494.47 that, after deduction from her monthly disposable income, leaves her with a positive balance of \$755.83 for her monthly disposable income. A garnishment of 15% of this income — or \$113.38 — would leave Petitioner with \$642.46 per month. The garnishment would not therefore by calculation cause Petitioner severe financial hardship.

However, HUD regulations state that no garnishment can occur if a Petitioner’s disposable income is less than 30 times the minimum wage. See 31 C.F.R. § 285.11(i)(2)(i); 15 U.S.C. § 1673(a)(2); 29 C.F.R. § 870.10. The current threshold amount by regulation is a monthly disposable income of \$870.00. Here, Petitioner’s income is \$755.83, an amount that is obviously below the threshold amount. As a result, in accordance with the proscribed regulations, the Secretary is prohibited from garnishing Petitioner’s wages at this time because her monthly income falls below the required threshold amount for garnishments.

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<sup>1</sup> These figures differ from those identified in the Secretary’s Statement or identified by Petitioner. The Secretary based its calculations on Petitioner’s September 7 – September 22, 2012 pay statement. (See Dillon Decl.; Ex. B.) In her documentary evidence, Petitioner included pay statements from the October 7 – October 20, 2012, pay period; the October 21 – November 3, 2012, pay period; and the November 4 – November 17, 2012 pay period. (Pet’r’s Doc. Evid., pp. 14, 24, 25.) The Court averaged the figures from the October pay statements and used these figures as the basis for its calculations.

**ORDER**

Based on the foregoing, I find that while the subject debt is legally enforceable against Petitioner in the amount claimed by the Secretary, the Secretary is prohibited from collecting the subject debt by means of administrative wage garnishment as Petitioner's monthly disposable income falls well below the regulatory threshold for permitting garnishments.

The stay of referral of this matter to the U.S. Department of Treasury for administrative wage garnishment is therefore extended indefinitely. It is hereby

**ORDERED** that the Secretary is not authorized to seek, at this time, collection of this outstanding obligation by means of administrative wage garnishment.

**The Secretary shall not be prejudiced, however, from again pursuing this claim in the future if Petitioner's income increases or Petitioner's essential monthly expenses decrease.**



Vanessa L. Hall  
Administrative Judge